



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

J.B. VAN HOLLEN
ATTORNEY GENERAL

Raymond P. Taffora
Deputy Attorney General

114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857

September 4, 2008

I—05—08

Mr. Dennis E. Kenealy
Corporation Counsel
Ozaukee County
1201 South Spring Street
Port Washington, WI 53074

Dear Mr. Kenealy:

You ask whether staff at a county jail who are trained to provide some basic emergency medical care prior to the arrival of medical professionals, but who are not sufficiently trained to be certified as first responders, must comply with a “do-not-resuscitate” order issued to a jail inmate under Wis. Stat. § 154.19. In my informal opinion, under recent revisions to Wis. Stat. ch. 154, these jail staff are not required by statute to honor the “do-not-resuscitate” orders of jail inmates.

Under certain circumstances, a person who has a medical condition that would make resuscitation useless or harmful if that person suffers cardiac or pulmonary failure may obtain a “do-not-resuscitate” order. Wis. Stat. §§ 154.17(4) and 154.19 (2005-06).

A “do-not-resuscitate” order “directs emergency medical technicians, first responders and emergency health care facilities personnel not to attempt cardiopulmonary resuscitation on a person for whom the order is issued if that person suffers cardiac or respiratory arrest.” Wis. Stat. § 154.17(2). “Resuscitation” means cardiopulmonary resuscitation or any component of cardiopulmonary resuscitation, including cardiac compression, endotracheal intubation and other advanced airway management, artificial ventilation, defibrillation, administration of cardiac resuscitation medications and related procedures.” Wis. Stat. § 154.17(5).

Unless an order is revoked, the bracelet evincing an order appears to have been tampered with or removed, or the patient is known to be pregnant, “emergency medical technicians, first responders and emergency health care facilities personnel shall follow do-not-resuscitate orders.” Wis. Stat. § 154.19(3)(a). *Accord* Wis. Admin. Code § HFS 125.05(1) (2001).

“First responder” is a defined term under Wis. Stat. § 154.17(3m). Prior to April 4, 2008, “first responder” was defined broadly. Instead of using the definition in Wis. Stat. § 146.50(1)(hm) (2005-06), which defined a first responder as a person who has been certified as a first responder by the Department of Health and Family Services (now the Department of Health Services), the Legislature chose to use the definition then in Wis. Stat. § 146.53(1)(d) (2005-06), which defined a first responder as “a person who, as a condition of employment or as

Mr. Dennis E. Kenealy

Page 2

a member of an organization that provides emergency medical care before hospitalization, provides emergency medical care to a sick, disabled or injured individual before the arrival of an ambulance, but who does not provide transportation for a patient.” The Legislature’s choice of definitions indicated intent to require all first responders, whether certified or not, to comply with “do-not-resuscitate” orders.

Effective April 4, 2008, however, the Legislature amended the definition of first responder within the meaning of Wis. Stat. ch. 154. 2007 Wisconsin Act 130. Wisconsin Stat. § 146.53(1)(d) was renumbered Wis. Stat. § 256.01(9) and amended to define first responder as “a person who is certified by the department as a first responder under s. 256.15(8)(a) and who, as a condition of employment or as a member of an organization that provides emergency medical care before hospitalization, provides emergency medical care to a sick, disabled or injured individual before the arrival of an ambulance, but who does not provide transportation for a patient.” Wis. Stat. § 256.01(9). It is clear from the revised definition that the Legislature intended to exclude persons who are not certified by the Department of Health Services as first responders from the applicable definition of “first responder” within the meaning of Wis. Stat. ch. 154.

You advise that, although the staff employed at the Ozaukee County jail are trained to provide some emergency medical care prior to the arrival of medical professionals, they are not certified first responders. Since the jail staff are not certified first responders, they are not included within the applicable definition of “first responder” and they are not required by Wis. Stat. § 154.19(3) to comply with the “do-not-resuscitate” orders of inmates.

Sincerely,

A handwritten signature in black ink, appearing to read "J.B. Van Hollen", with a stylized, cursive script.

J.B. Van Hollen
Attorney General

JBVH:SLT:cla